

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF SAINT CROIX

UNITED STATES OF AMERICA,

Plaintiff,

Crim. No. 2003/033

v.

OSCAR CAIN, SILFORD BALLENTINE,

Defendants.

**ORDER REGARDING GOVERNMENT'S
MOTION FOR DISPOSITION OF EVIDENCE**

THIS MATTER came for consideration on the government's motion to dispose of evidence in this matter. Defendant Cain filed an opposition to the motion. Defendant Ballentine did not respond.

The government seeks the Court's permission to destroy approximately 54 kilograms of marijuana allegedly seized from defendants, and which is currently being stored at a warehouse in Puerto Rico. The government asserts that because of the limited storage space available, the Bureau of Immigration and Customs Enforcement has recommended that the contraband be destroyed.

Defendant Cain opposes the motion and argues that he has not viewed the evidence nor has he seen a laboratory report regarding it. He asserts that destruction of evidence implicates his due process rights and that destruction, at this time, will prevent his expert from doing his own analysis. He claims that his counsel has been in discussions with Agent Nelson Mendoza of the Bureau with custody of the drugs regarding viewing the drugs.

Failure to preserve potential useful evidence does not constitute denial of due process of law unless a criminal defendant can show bad faith on the part of the police. *Arizona v. Youngblood*, 488 U.S. 51, 58 (1994). The presence or absence of bad faith by the police for purposes of the Due Process Clause must necessarily turn on the police's knowledge of the exculpatory value of the evidence at the time it was lost or destroyed. *Id.* A defendant who claims destroyed evidence might have proved exculpatory if it could have been subjected to tests has to show the prosecution's bad faith in ordering or permitting its destruction. *US v. Deaner*, 1 F.3d 192, 200 (3d Cir. 1993).

In this case, the government states that the drugs have already been weighed and photographed, and a representative sample retained for litigation purposes. It informs the defendant and this Court that destruction is necessary because storage space is limited. The defendant counters that he has been discussing a viewing with Agent Mendoza, and asks that the evidence be maintained until such viewing is complete.

Upon consideration it is hereby ORDERED AS FOLLOWS:

1. Within five (5) days of date of this Order, counsel shall meet and agree on a specific date prior to November 21, 2003, for defendants' attorneys/investigators to view the evidence and have any further representative samples preserved for analysis and litigation purpose.
2. Subsequent to such agreed date, and upon compliance with any agreed procedure, the evidence shall be destroyed.
3. The government shall promptly produce all discoverable materials concerning the

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marijuana to be destroyed.

Dated: October 30, 2003

ENTER:

JEFFREY L. RESNICK
U.S. MAGISTRATE JUDGE

A T T E S T:

Wilfredo F. Morales, Clerk of Court

by: _____
Deputy Clerk

cc: AUSA St. Clair Theodore
AFPD Patricia Schrader-Cooke
Amelia Joseph, Esq.